

Appln. No.: 10/077,405
Amdt. dated January 18, 2007

REMARKS

In the Office Action of August 18, 2006, claims 1-6 and 9-10 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Duault (6,912,224) in view of Yao (6,097,697). Claim 1 is amended herewith to clarify what is being claimed. Claim 1 as amended includes an operation (b) of "holding each data element that is received prior to an end of a time period associated with each data element in a buffer until the end of the time period, at which time the data element is released for playout," and an operation (c) of "monitoring a loss rate at which data elements in the data stream are not received by the end of their respective time periods." Claim 1 further includes an operation (d) of "adjusting a duration of the time period based upon the loss rate." It is important to note that "the time period" that is adjusted in operation (d) is the time period referred to in operations (b), i.e., the time period at the end of which each data element held in the buffer is released from the buffer for playout. The Examiner asserts that Duault teaches adjusting the duration of the time period defined in operation (b) of claim 1, that is, the time period at the end of which each data element held in the buffer is released from the buffer for playout, citing the abstract of Duault (note that in the previous Office Action, dated December 13, 2005, the Examiner acknowledged that Duault does NOT teach this limitation). Applicant submits that the abstract of Duault does not say anything about adjusting any time period, let alone adjusting the time period at the end of which each data element held in the buffer is released from the buffer for playout. Duault refers to a time period, but the time period referred to is simply an arbitrary time period over which the fill level of the buffer is measured, not the time period defined in claim 1. Furthermore, Duault does not even talk about adjusting this time period. Additionally, Duault does not talk about adjusting anything at all based upon the loss rate, let alone adjusting the time period at the end of which each data element held in the buffer is released from the buffer for playout based on the loss rate.

In support of the Examiner's contention that operation (d) of claim 1 is taught in the abstract of Duault, the Examiner asserts that Duault's abstract teaches that "the playout rate (duration) is adjusted for each monitored time period of the jitter buffer." This statement is nonsensical, inaccurate, and irrelevant. It's nonsensical because it is not known why the Examiner includes the word "duration" in parentheses after the term "playout rate." A playout

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rate is not equivalent to a duration. It's inaccurate because the abstract of Duault does not talk about adjusting a playout rate of the playout buffer. Rather it talks about adjusting the average filling level of the buffer. And it's irrelevant because operation (d) is not directed to adjusting a playout rate of the buffer, it's directed to adjusting the time period at the end of which each data element held in the buffer is released from the buffer for playout. For at least these reasons, Applicant submits that claim 1, and claims 2-10 depending thereon, are allowable over the cited art.

In the Response to Arguments section of the Office Action, the Examiner states, "The Duault reference of 'Adaptive Playout Buffer and Method for Improved Data Communication' specifically deals with jitter variance of incoming data using a POB (playout buffer) by adjusting a time period of data elements held in operation at the buffer for a data playout." The Examiner apparently quotes the title of Duault under the mistaken impression that the word "adaptive" in the title somehow indicates that the target holding time of the playout buffer is adjusted. To the contrary, what is adjusted (adaptive) in Duault is the average filling level of the buffer (see abstract and col. 2, line 64 – col. 3, line 13). Furthermore, as explained above, Duault does not teach adjusting *anything* based on the loss rate, as in claim 1.

Claims 12-16, 23-25 and 32-33 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Duault and further in view of Ho (6,810,377). Claim 12 is amended herewith to incorporate the limitations of claim 17 and intervening claims 15 and 16. Claim 17 was rejected under 35 U.S.C. 103(a) as being unpatentable over Duault in view of Ho and further in view of Yao. Claim 12 as amended includes limitations included in claim 1. Applicant submits that claim 12 is allowable for the reasons set forth above with respect to claim 1.

In the Office Action with respect to claim 17, the Examiner conceded that Duault fails to describe operation (e), "adjusting a duration of the time period based upon the loss rate," and goes on to assert that this limitation is taught by Yao. Applicant would note that, with respect to claim 1, the Examiner asserted that Duault does teach this limitation. As explained above with respect to claim 1, it does not. With respect to claim 17, the Examiner asserted that Yao teaches operation (e), "adjusting a duration of the time period based upon the loss rate." It is important to note that "the time period" that is adjusted in operation (e) is the time period referred to in

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operation (b), i.e., the time period at the end of which the data elements held in operation (b) are released for playout. The Examiner supports his assertion that operation (e) is taught by Yao by saying that Yao teaches adjusting a *transmission rate* based upon a loss rate. Applicant submits that claim 12 (which incorporates claim 17 herewith) does not claim adjusting a transmission rate. It claims adjusting a time period at the end of which the data elements held in operation (b) are released for playout. Neither Duault nor Yao teach this. For at least these reasons, Applicant submits that claim 12, and claims 13, 14 and 18-22 depending therefrom, are not obvious in view of Duault, Ho and Yao.

Claim 23 is amended herewith to incorporate the limitations of claim 26. Claim 26 was rejected under 35 U.S.C. 103(a) as being unpatentable over Duault in view of Ho and further in view of Yao. Claim 23 as amended includes limitations included in claim 1. Applicant submits that claim 23 is allowable for the reasons set forth above with respect to claim 1.

In the Office Action with respect to claim 26, the Examiner conceded that Duault fails to describe "a controller adapted to monitor a loss rate at which data elements in the data stream are not received by the end of their respective time periods and to adjust a duration of the time period based upon the loss rate," per claim 26, and goes on to assert that this limitation is taught by Yao. Applicant would note that, with respect to claim 1, the Examiner asserted that Duault does teach this limitation. As explained above with respect to claim 1, it does not. The Examiner asserted with respect to claim 26 that Yao teaches a controller that adjusts a duration of the time period based upon the loss rate. It is important to note that "the time period" that is adjusted by the controller is the time period defined in the first clause of claim 23, i.e., the time period at the end of which each data element held in the jitter buffer is released for playout. The Examiner supports his assertion that Yao teaches this limitation by saying that Yao teaches adjusting a *transmission rate* based upon a loss rate. Applicant submits that claim 23 (which incorporates claim 26 herewith) does not claim adjusting a transmission rate. It claims adjusting the time period at the end of which the data elements held in the jitter buffer are released for playout. Neither Duault nor Yao teach this. For at least these reasons, Applicant submits that claim 23, and claims 24, 25 and 27-33 depending therefrom, are not obvious in view of Duault, Ho and Yao.

FROM McANDREWS, HELD, & MALLOY

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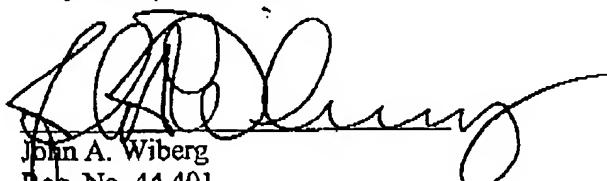
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In view of the foregoing, Applicant respectfully requests allowance of claims 1-14, 18-25 and 27-33.

The Commissioner is hereby authorized to charge any additional fees or credit any overpayment to the deposit account of McAndrews, Held & Malloy, Account No. 13-0017.

Date: 1/18/07

Respectfully submitted,



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